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**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
Washington, D.C.**

**Finance Docket No. 35539**

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**JIE AO AND XIN ZHOU  
PETITION FOR DECLARATORY ORDER**

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**REPLY OF KING COUNTY, WASHINGTON  
TO PETITION FOR DECLARATORY ORDER**

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Communications with respect to this document should be addressed to:

Part of  
Public Record

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Counsel for King County, Washington

Dated: October 11, 2011

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King County, Washington, joins with the Port of Seattle to oppose the request of Petitioners Jie Ao and Xin Zhou to institute a declaratory order proceeding. King County is the trail sponsor of the land at issue in this matter and therefore has a substantial interest in this matter.<sup>1</sup>

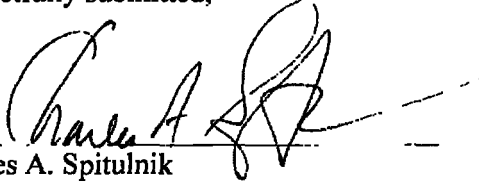
This Board's precedent is clear that attempts to use state law, such as condemnation or adverse possession, to convert railroad right-of-way to non-railroad uses are generally preempted. *E.g., City of Lincoln—Petition for Declaratory Order*, STB Finance Docket No. 34425 (STB served Aug. 11, 2004), *aff'd*, *City of Lincoln v. STB*, 414 F.3d 858 (8<sup>th</sup> Cir. 2005). Even if Petitioners' attempt to use state law to convert portions of the Washington Branch Line to non-railroad uses is not categorically preempted, the Port of Seattle has demonstrated in its *Reply to Jie Ao's and Xin Zhou's Petition for Declaratory Order* filed in this Docket today, that Petitioners have failed to meet their burden of showing that such conversion would not unreasonably interfere with transportation by rail.

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<sup>1</sup> *BNSF Ry. Co. – Acquisition Exemption*, AB-6 (Sub-No. 464X) (Service Date Sept. 26, 2008); *BNSF Ry. Co. – Abandonment Exemption in King Cnty., WA*, STB Docket No. AB-6 (Sub-No. 464X) (Service Date Oct. 27, 2008).

Accordingly, the County requests the Board to deny the Petition. In the event the Board institutes a proceeding and issues a procedural schedule allowing for additional filings, King County intends to participate in such proceeding in order to fulfill its obligations as trail sponsor to protect the integrity of the right-of-way.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles A. Spitulnik", is written over a horizontal line.

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Dated: October 11, 2011

Counsel for King County, Washington

**Certificate of Service**

I hereby certify that I have this 11th day of October, 2011, caused to be served a copy of the foregoing Reply of King County, Washington to Petition for Declaratory Order, upon the following parties of record:

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